DEED OF CONSERVATION EASEMENT

	THIS DEED (OF CONSERVATION EASEMENT ("Easement"), made as of
this	day of	, by IRON COUNTY, STATE OF UTAH, whose address is
	, Utah	("Grantor"), and the UTAH DEPARTMENT OF NATURAL
RESC	OURCES ("Depa	artment") whose address is 1594 West North Temple, Salt Lake
City,	Utah 84114;	

WITNESSETH

WHEREAS, the purpose of this conservation easement is to protect and enhance forever natural wildlife habitat (principally Utah Prairie Dog habitat), to mitigate impacts to Utah prairie dogs identified in the Cedar City Golf Course and Paiute Tribe Conservation Plan prepared under Section 10(a)(1)(B) of the Endangered Species Act, and to protect and enhance open space and scenic qualities of the real property described below;

WHEREAS, Grantor is the owner of all the real property in Iron County, State of Utah, described in the attached Exhibit A ("Property") and approximately located on the map attached as Exhibit B; and

WHEREAS, the Property has significant wildlife habitat (particularly Utah Prairie Dog habitat), ecological, scenic, and open space values as recognized in the Utah Land Conservation Easement Act, (Utah Code Ann. §§ 57-18-1 to 57-18-7); and Grantor intends to convey this Easement under the statutory provisions of that Act and other applicable provisions of Utah statutory and common law; and

WHEREAS, the Property constitutes a valuable element of the natural habitat and ecosystem and the ecosystem's ecological, scenic, and open space values, including flora, fauna, and soils; the Property provides significant wildlife habitat, and the maintenance of such natural habitat is critical to Utah Prairie Dogs and further helps support other wildlife populations. All these natural habitat, ecological, scenic, wildlife, and open space values ("Conservation Values") are worthy of conservation and of great importance to Grantor, the Department, and the State of Utah; and

WHEREAS, Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not compromise the Conservation Values, including such activities as ranching, farming, hunting, fishing, hiking, camping, cross-country skiing, and equestrian uses ("Primary Uses"); and

WHEREAS, Grantor, as the fee owner of the Property, holds the right to identify, conserve, enhance, and protect in perpetuity the Conservation Values of the Property; and

WHEREAS, Grantor desires and intends to transfer certain of such rights to the Department; and

WHEREAS, the State of Utah has recognized the importance of both public and private efforts to conserve and protect the state's natural resources by the enactment of Utah Code Ann. §§ 57-18-1 to 57-18-7; and

WHEREAS, the Department undertakes the responsibility to conserve and protect natural areas and significant wildlife habitat for ecological, scientific, recreational, and educational purposes; and the Department is a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and a qualified conservation easement holder under Utah Code Ann. § 57-18-3; and the Department is a qualified organization under Section 170(h)(3) of the Internal Revenue Code to receive and hold conservation easements; and

WHEREAS, the parties desire that any interpretation of this Easement be construed to further the conservation, protection, and enhancement of the Property's Conservation Values; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to Utah Code Ann. §§ 57-18-1 to 57-18-7, and other applicable provisions of Utah statutory and common law, Grantor hereby conveys and warrants to the Department, subject to all existing rights and encumbrances of record, this perpetual Easement over the Property. The scope of this Easement is set forth in this deed.

SECTION I - RIGHTS OF THE DEPARTMENT

The total property (hereafter referred to as "Property") owned by Grantor which will be encumbered by this Conservation Easement, subject to all existing rights and encumbrances of record, as described in Exhibit A and as depicted in Exhibit B. The rights conveyed by Grantor to the Department to perpetually maintain the Conservation Values of the Property in this Easement include the following:

- A. <u>Identification and Protection</u>. The Department has the right to identify, conserve and protect in perpetuity, and by mutual agreement to enhance the Conservation Values on the Property in the manner set forth in this Easement.
- B. <u>Access</u>. The Department shall have a right of unrestricted access to the Property to carry out the purposes for which this Easement is granted and shall have the right to grant to the public access to the Property for purposes of hunting, trapping, fishing and other recreational opportunities, as the Department deems appropriate, and in keeping with the intended purposes of this easement and its conservation values.
- C. <u>Conservation, Enforcement, Injunction, and Restoration</u>. The Department has the right to prevent any activity on, or use of the Property, which is inconsistent with this Easement. The Department is entitled to take any legal action to prevent such

activity, including but not limited to, obtaining an injunction in a court of competent jurisdiction. The Department further has the right to enforce the reasonable restoration of such areas or features of the Property damaged or impaired by any activities or omissions to prevent such activities inconsistent with this Easement. The prevailing party (Department or Grantor) in any judicial action shall be entitled to recover its costs and reasonable attorney's fees in enforcing its rights under this Easement.

- D. <u>Signs</u>. The Department has the right to place signs on the Property, which identify the Property as being protected by this Easement. The number and location of the signs are subject to Grantor's approval, which will not be unreasonably withheld.
- E. Wildlife and Wildlife Habitat Management. The Department has the right to utilize the Property to promote the preservation, protection, perpetuation, introduction, enhancement and management of wildlife, particularly Utah Prairie Dogs. The Department may manipulate habitat, control noxious plants, improve water resources, construct wildlife watering structures (guzzlers), grow crops, construct fences, control animal species harmful to wildlife management objectives, introduce non-native plant and animal species, and engage in other related activities provided the activity will benefit wildlife and not interfere with the purposes of this Easement. These habitat management activities shall not be construed as prohibited under Section V of this Easement when undertaken by the Department to benefit wildlife in keeping with the purpose of the Easement. Prior to any management actions taken, the Department shall notify the Service of the intended action.

SECTION II- GENERAL EFFECT OF EASEMENT

- A. <u>Perpetual Restrictions</u>. This Easement shall run with and encumber the title to the Property in perpetuity and shall bind Grantor and all future owners, assigns, and tenants of the Property.
- B. <u>Permitted Uses in General</u>. This Easement shall confine the use of the Property to activities such as the Primary Uses or Permitted Uses, consistent with the purposes and terms of this Easement. Any activity on or use of the Property inconsistent with the purposes or terms of this Easement or detrimental to the Conservation Values expressed in this Easement is expressly prohibited. Notwithstanding the terms, conditions, restrictions and rights set forth herein, the Property shall be managed consistent with the Utah Prairie Dog Habitat Conservation Plan for the Cedar City Golf Course.
- C. <u>Dedication of Property</u>. Pursuant to the terms of Utah Code Ann. §§ 57-18-1 to 57-18-7, the Property conserved by this Easement, as described in Exhibit A and B, is declared open space and natural land, and may not be converted or directed to any uses other than those provided in this Easement.

SECTION III - PERMITTED USES AND PRACTICES

The following uses and practices, while not an exhaustive recital of permitted uses and practices, are consistent with this Easement. The uses and practices described in this section may not be precluded or prevented by this Easement, except under the following circumstances. The uses and practices may be precluded when this Easement requires the Department's prior approval of an activity as provided in Section IV of this Easement or when such uses or practices are conducted or allowed to take place in a manner which violates the terms of this Easement, poses a serious threat of material damage to the Conservation Values protected by this Easement, or constitutes a prohibited use or practice as set forth in Section V of this Easement.

- A. <u>Hunting and Fishing</u>. Hunting, trapping and fishing are permitted on the Property only to the extent such activities are consistent with state and federal laws and regulations. The intent of this provision is to permit levels of hunting, trapping and/or fishing which are not detrimental to sustainable levels of wildlife and fish populations. The parties agree and acknowledge that hunting may be a desirable management tool to balance wildlife numbers with range and habitat condition.
- B. Water Resources. Upon approval by the Department as required in Section IV of this Easement, Grantor may improve water resources on the Property if such improvement is necessary or beneficial to livestock, wildlife and wildlife habitat on the Property. Such improvements must be consistent with the terms of this Easement and the conservation values protected therein, as well as comply with all applicable laws and regulations. Such improvements include dug-out development, watering tank installation, and wildlife watering structures (guzzlers), provided the improvement does not result in any water pollution having a detrimental effect on fish, aquatic life, wildlife, their habitat, or their passage.

Upon approval by the Department as required in Section IV of this Easement, Grantor may also carry out activities to restore and enhance aquatic, terrestrial, and wetland habitat for fish and wildlife use and production. Such activities may include stream bank stabilization, improvement to the quality and quantity of water available, and development of watering facilities and ponds; provided such activities are conducted in a manner consistent with accepted waterway stabilization, rehabilitation, and enhancement methods, state and federal laws and regulations, and the terms and intent of this Easement.

Water usage or distribution on the Property shall not be altered in such a manner as to compromise the terms of this Easement or the Conservation Values protected therein, as identified in the Baseline Inventory.

C. <u>Agrochemicals and Biological Controls</u>. Upon approval by the Department as required in Section IV of this Easement, Grantor may use agrochemicals and biological controls on the Property, including but not limited to insects, fertilizers,

biocides, herbicides, pesticides, insecticides and rodenticides. Agrochemical and biological controls may only be used in accordance with all applicable laws, and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable ranching and grazing objectives. The use of such agents shall be conducted in a manner to minimize any adverse effect on the natural values of the Property and to avoid any impairment of the natural ecosystems and their processes.

- D. <u>Predators</u>. Upon approval by the Department as required in Section IV of this Easement, Grantor may use legal methods to control predatory and problem animals as permitted by state and federal laws.
- E. <u>Livestock Grazing</u>. Good range stewardship and proper management of domestic livestock are integral to the conservation goals of this Easement. Livestock grazing shall be consistent with the BLM grazing permit on the adjacent Long Hollow allotment and in no event shall grazing materially degrade or deteriorate the wildlife habitat, particularly that of the Utah Prairie Dog. The Department reserves the right, at its sole cost, to have consultants or employees, including range scientists, fisheries biologists, hydrologists, ecologists, and wildlife biologists, evaluate the habitat and grazing practices and make on-site evaluations to provide recommendations to the BLM.

SECTION IV - PRIOR APPROVAL OF ACTIONS BY DEPARTMENT

If any provision of this Easement requires Grantor to obtain the Department's approval prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section have been fully satisfied. Nothing in this Section shall in any way prohibit or limit the Department's ability to obtain writs or injunctive relief relating to any violation of this Easement.

- A. <u>Grantor's Written Notice</u>. Prior to the commencement of any activity, use or enterprise which requires the Department's approval, Grantor will first notify the Department in writing of the proposed activity, use or enterprise. The notice must fully inform the Department of all material aspects of the proposed activity, use or enterprise. Grantor will send such notices to the Department by registered or certified mail, return receipt requested, addressed to the Utah Department of Natural Resources, at 1594 West North Temple, Salt Lake City, Utah 84114, Attention: Executive Director's Office, or to such other address as the Department may designate in writing.
- B. <u>Department's Response</u>. The Department shall have forty five (45) days from the date such notice is received (as indicated by the registered or certified return receipt) to review the proposed activity, use, or enterprise and to notify Grantor of any objections it may have to the activity, use, or enterprise. The objections, if any, shall be based upon the Department's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Property's Conservation Values or is otherwise inconsistent with the purpose and/or provisions of this Easement. If, in the Department's judgment, the proposal presented by Grantor can be modified to avoid material damage to

The forty-five (45) day period shall not begin to run for purposes of this paragraph until such time the Department has received adequate information from Grantor to effectively evaluate the proposed activity. In the event the Department requires additional information to evaluate the proposed activity, the Department shall request the information from Grantor as soon as practicable and in any case not later than 45 days after the receipt of the notice of the proposed activity.

- C. <u>Department's Failure to Respond</u>. If the Department fails to post its response to a proposal presented by Grantor within forty-five (45) days after it receives the proposal by registered or certified mail, or within forty-five (45) days after the Department has received adequate information to evaluate the proposed activity, whichever is later, then the proposed activity, use or enterprise shall be deemed consistent with the terms of this Easement, and the Department will have no further right to object to the activity, use or enterprise described in the proposal.
- D. <u>Force Majeure</u>. Grantor will not be obligated to send a notice to the Department, and the Department will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify the Department of any injury to the Property caused by such events or the efforts to prevent, abate, or mitigated any damage caused by such events.

<u>SECTION V - PROHIBITED USES AND PRACTICES</u>

Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement and which is likely to cause material damage to the Conservation Values is expressly prohibited. Grantor agrees that the following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are explicitly deemed inconsistent with the purposes of this Easement, and shall be prohibited.

A. <u>Commercial Facilities and Activities</u>. Grantor will not establish or conduct any commercial or industrial facilities or activities on the Property, including but not limited to any restaurant, night club, campground, trailer park, bed and breakfast, motel, hotel, lodge, swimming pool, snowmobiling, skiing, gas station, retail outlet or facility for the manufacture or distribution of any product.

- B. <u>Construction</u>. Grantor will not construct or establish any structures or facilities on the Property (other than those necessary or beneficial in the operation or use of the Property expressly permitted by this Easement).
- C. <u>Game Farming or Game Farm Animals</u>. Grantor will not construct or operate a game farm on the Property, nor will Grantor raise or hold game farm animals on the Property. Game farm animals include game farm animals regulated or prohibited by the Utah Legislature, the Department of Wildlife Resources, or the Department of Agriculture and Food.
- D. <u>Alternation of Watercourses and Topography</u>. Grantor will not change, disturb, alter, excavate, or impair any watercourse or wetland or the topography of the ground on the Property, except as expressly permitted by Section III, Subsection B and of this Easement.
- E. <u>Subdivision</u>. Grantor does not have the right nor will any attempt be made to divide, subdivide, or take any action, which creates an actual or *de facto* subdivision of the Property.
- F. <u>Roads</u>. Grantor will not construct any new roads or improve existing roads on the Property without the prior approval of the Department, as provided in Section IV of this Easement. Any new road approved by the Department and constructed for temporary use will be reclaimed and restored to its original condition within six (6) months following discontinued use.
- G. Off-Road Vehicles. Grantor will not use vehicles (cars, trucks, ATVs and snowmobiles) off the existing roads and travelways in a manner which may result in; 1) significant soil erosion or compaction, 2) adverse impacts to the natural appearance of the Property, 3) interference with vegetation, 4) interference with the natural habitats of animal species, or 5) harassment of animal species occurring on the Property. The parties recognize, however, that use of off-road vehicles may be necessary in habitat projects, range management, scientific study, livestock grazing activities, and other related uses, and such limited use is therefore expressly permitted, provided that all reasonable efforts are made to minimize any adverse impact of the use consistent with the terms and intent of this Easement.
- H. <u>Commercial Feed Lot</u>. Grantor will not establish or maintain any commercial feed lot on the Property. For purposes of this Easement, a commercial feed lot is defined as a permanently constructed, confined area or facility, within which the land is not grazed or cropped annually, used for purposes of engaging in the business of receiving and feeding livestock for hire.
- I. <u>Dumping</u>. Trash, debris, ashes, sawdust, and other non-compostable refuse may not be dumped or otherwise disposed of on the Property.

- J. <u>Utilities</u>. Additional utility structures and systems are prohibited, unless such structures or systems are necessary for Permitted Uses. Absent the Department's prior approval as required in Section IV of this Easement, any additional permitted utility structures or systems must be buried and the disturbed area restored.
- K. <u>Mineral Activities</u>. To the extent Grantor owns or controls the mineral estate on the Property, the following restrictions apply. Exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials found in, on, or under the Property is prohibited by open-pit or surface mining methods. No sub-surface exploration or extraction of oil, gas, rock, gravel, sand, minerals, artifacts, or other materials (including the lease, sale, or other disposition of the rights to such materials) may impair or destroy the Property's Conservation Values. No mineral activities inconsistent with §170(h)(5)(B) of the Internal Revenue Code are permitted.
- L. <u>Raptor Nests</u>. Grantor will not move or destroy any known or readily identifiable raptor nest at any time, regardless of its active/inactive or occupied/unoccupied status. Grantor will not cut or disturb any trees or other vegetation within 300 feet of any known or readily identifiable active raptor nest during the nesting season, or remove any crown trees or over story vegetation within 300 feet of any known or readily identifiable active raptor nest at any time. However, diseased trees not containing a raptor nest may be cut down and removed during the non-nesting season to abate infestations.
- M. <u>Billboards</u>. Grantor will not construct, maintain, or erect any commercial signs or billboards on the Property. Small signs may be displayed, however, to advertise the Property for sale, to identify the Property owner, to post the Property as private, or to post the Property as protected by this Easement.
- N. <u>Aircraft Facilities</u>. Grantor will not construct or erect any aircraft facilities or aircraft landing facilities on the Property.
- O. <u>Cultivation or Farming</u>. Additional sodbusting is prohibited, except as authorized or carried out by the Department pursuant to Section I, Subsection E.
- P. <u>Water</u>. It is understood that water is essential to the maintenance of the Conservation Values associated with the Easement Property. Therefore, Grantor will not sell or convey any interest in the Property or the water appurtenant to the Property that effectively severs the water interest from the Property.

<u>SECTION VI - BREACH, RESTORATION, AND REMEDIES</u>

A. <u>Breach and Restoration</u>. Where the Department becomes aware of a violation or potential violation of any restriction contained in this Easement, or becomes aware of any damage or potential damage to the Conservation Values associated with the Property, whether precipitated by Grantor or by a third party, the Department may notify Grantor in writing of such violation, potential violation, damage or potential damage. Upon

Grantor's receipt of such notice, Grantor agrees to immediately take action to prevent or stop the activity, which potentially or actually violates the terms or intent of this Easement.

Grantor shall have thirty (30) days after receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Grantor fails to take such corrective action, the Department may undertake appropriate action, including legal action, to effect such corrections. The cost of such corrections, including the Department's expenses, court costs, and legal fees, shall be paid by Grantor. In the event Grantor is found not in violation of this Easement, then Grantor's legal fees shall be paid by the Department.

- Injunctive and Other Relief. In the event Grantor undertakes or causes to be undertaken any activity on the Property that requires the Department's prior approval and such approval is not obtained consistent with Section IV of this Easement, or where Grantor undertakes or causes to be undertaken any activity in violation or potential violation of the terms of this Easement; the Department shall have the right to obtain injunctive relief or writs from courts of competent jurisdiction to stop any unauthorized activities and/or force the restoration of that portion of the Property affected by such activity to a similar or equivalent condition that existed prior to the unauthorized activity. Such restoration may include, but is not limited to, restoring soils, replanting suitable native vegetation, and/or taking such other action as the Department deems necessary to achieve restoration. In such case, the costs of restoration and litigation, including reasonable attorney's fees, shall be borne by Grantor or those of its successors or assigns against whom a judgment is entered. In the event a judgment is entered against the Department in an effort to seek injunctive relief or restoration and Grantor is held not to be in violation of this Easement, the Department shall pay Grantor's costs of litigation, including reasonable attorney's fees.
- C. <u>Actual or Threatened Non-Compliance</u>. Grantor acknowledges that actual or threatened instances of non-compliance under this Easement constitute immediate and irreparable harm. The Department is entitled to invoke the equitable jurisdiction of any court to enforce this Easement.
- D. <u>Cumulative Remedies</u>. The Department's remedies set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by the Department if there is an actual or threatened violation of this Easement.
- E. <u>Delay in Enforcement</u>. A delay in enforcement shall not be construed as a waiver of the Department's right to enforce the terms of this Easement.

SECTION VII - COSTS AND TAXES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with all

applicable Utah laws. Grantor shall pay any and all lawful taxes, assessments, fees, and charges levied by competent authority on the Property.

SECTION VIII - INDEMNITY

Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property, and agrees to indemnify the Department against all claims and obligations arising from such operation, upkeep, and maintenance activities. Grantor also agrees to defend and indemnify the Department against obligations arising from past, present or future dumping of hazardous materials on the Property, and any obligations associated with their cleanup or containment. Nothing contained herein shall be construed as waiving immunity, the monetary damage limitations, or any other provision set forth in the Utah Governmental Immunity Act, Utah Code §§ 63-30-1 through 63-30-38.

SECTION IX - ASSIGNMENT OF EASEMENT

The Department may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of Section 170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h) (4) (a) of said Code. Prior to transfer or assignment of this Easement, the Department shall collaborate with the Service regarding recipients to ensure the intended purposes of the Easement are maintained. Any such qualified organization shall agree to enforce the conservation purposes protected by this Easement.

SECTION X - BASELINE DATA

The parties acknowledge that an inventory of baseline data to the Property (Exhibit D) has been completed by competent professionals familiar with the Property, and furnished to the Department by Grantor. Copies of this inventory of baseline data are on file in the Departments' Salt Lake City, Utah offices. The parties acknowledge that this collection of baseline data contains an accurate representation of the Property's condition and natural resources as of the date of the execution of this Easement in accordance with Treasury Regulation 1.170A-14(g)(5)(I).

Notwithstanding the foregoing, should a future controversy arise over the biological and/or physical condition of the Property, the parties may use all relevant documents, surveys, reports and other information to assist in resolving the controversy.

If range or habitat conditions significantly improve on the Property, the parties may agree to prepare an updated inventory of baseline data to document the improved conditions. The updated inventory of baseline data must be approved in writing by the parties. Upon approval, the updated inventory of baseline data will be used as the baseline for future monitoring.

SECTION XI - EXTINGUISHMENT OF DEVELOPMENT RIGHTS

Grantor hereby acknowledges the extinguishment of all development rights associated with the Property, except those specifically reserved herein. Grantor agrees that all rights or interests in such development rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be described, or to any other adjacent property, nor used for the purpose of calculating permissible lot yield or density of the Property or any other property with regard to any land use or zoning which affects, or may affect, the Property.

SUBSEQUENT SALE, EXCHANGE, OR INVOLUNTARY CONVERSION

Grantor and the Department agree that the conveyance of this Easement creates a property right immediately vested in the Department. The Department's property right in this Easement shall be based on the condition and improvements on the Property at the time the Easement is established, and this condition shall be documented as referred to in Section X, above. For purposes of this Section, the property right shall be deemed to have a fair market value at least equal to the proportionate value this Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of the Department's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Easement, as provided in Treasury Regulation Section 1.170A-14(g)(6)(I), or extinguishment of a portion of the Department's rights under this Easement, the Department on a subsequent sale, exchange, conveyance, or involuntary conversion of the Property or a portion of the Property shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time of its creation. All interpretations of the Department's property rights shall follow Treasury Regulation Section 1.170.

Whenever all or part of the Property is taken in exercise of eminent domain, or under claim of rights of eminent domain, by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor shall and the Department may join in appropriate actions to recover the full value of the Property taken and all incidental or direct damages resulting from such taking. All reasonable expenses incurred by Grantor or the Department in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between Grantor and the Department in proportion to their interest in the Property, as provided in the first paragraph of this Section.

Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a copy of this Easement will be attached thereto. Grantor will notify the Department in writing of any conveyance of interest by sending written notice to the Department as provided in Section IV, Subsection A. Grantor agrees to provide notice of this Easement to all successors in interest, and to any potential purchasers or subsequent owners. In the event Grantor elects to sell the Property, Grantor agrees to provide notice of this Easement in any sale or solicitation

materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable.

<u>SECTION XIII - MISCELLANEOUS PROVISIONS</u>

- A. <u>Partial Invalidity</u>. If any provision of this Easement, or the application of this Easement, or the application of this Easement to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.
- B. <u>Enforcement</u>. Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of the Department, and that the Department's failure to exercise its rights under this Easement, in the event of any breach by Grantor, shall not be considered a waiver of the Department's rights under this Easement in the event of any subsequent breach.
- C. <u>"Grantor" and "Department"</u>. The term "Grantor", as used in this Easement, and any pronouns used in place thereof shall mean and include the abovenamed Grantor, and its heirs, personal representatives, executors, successors and assigns. The term "Department", as used in this Easement, and any pronouns used in place thereof shall mean the Utah Department of Natural Resources and its successors and assigns.
- D. <u>Titles</u>. Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.
- E. <u>Amendment</u>. Nothing in this Easement shall be construed to preclude Grantor from making a subsequent conveyance of rights in the Property to further protect its Conservation Values, provided, however, that any such subsequent conveyance shall not impair any conservation purpose sought to be advanced by this Easement.
- F. <u>Liberal Construction</u>. This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with Utah Code Ann. §§ 57-18-1 to 57-18-7. The parties acknowledge that each has reviewed and revised this Easement with the assistance of counsel, and that no rule of construction resolving ambiguities against the drafting party shall be employed in interpreting this Easement.
- G. <u>Successors</u>. This Easement is binding upon, and will inure to the benefit of Grantor's and the Department's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as Grantor.
- H. <u>Governing Law</u>. This Easement will be interpreted and construed in accordance with applicable Utah laws.

- I. <u>Entire Agreement</u>. This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.
- J. <u>Compliance with Law</u>. All uses and practices permitted by this Easement, including the Primary Uses, shall comply with all applicable state and federal laws.
- K. <u>Effective Date</u>. The effective date of this Easement will be the date signed by all parties.
- L. <u>Notice Requirements</u>. Grantor hereby acknowledges that the Department, at least three days prior to the execution of this Easement, discussed with it the types of conservation easements available, the legal effect of each easement, and the advisability of consulting legal counsel concerning the possible legal and tax implications associated with granting this Easement.
- M. Right of First Refusal. In the event Grantor chooses to sell or convey the remaining interest in the Property encumbered by this Easement, the Department shall have the Right-of-First-Refusal to purchase said remaining interest at a value equal to any bona fide offer to purchase the remaining interest. It is understood that water is essential to the maintenance of the Conservation Values associated with the Easement Property, therefore, in the event Grantor chooses to sell or convey any or all water rights attached or used on the Property described in this Easement at the date of its execution, the Department shall have the Right-of-First-Refusal to purchase or acquire said water rights or shares at a value equal to any bona fide offer to purchase the rights or shares.
- N. <u>Change of Conditions</u>. The fact that any use of the Property expressly prohibited by this Easement or otherwise determined inconsistent with the purpose of this Easement may become significantly more valuable or economical than permitted uses, or that neighboring properties may in the future be put entirely to uses inconsistent with this Easement, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the public's benefit and interest in the continuation of this Easement, and it is the intent of both Grantor and the Department that any such changes not be considered circumstances sufficient to terminate this Easement, in whole or in part. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination.

IN WITNESS WHEREOF, Grantor	and the Department execute this Easement.
GRANTOR:	DEPARTMENT:
IRON COUNTY STATE OF UTAH	UTAH DEPARTMENT OF NATURAL RESOURCES
By	By Robert L. Morgan, P.E. Executive Director

STATE OF UTAH PATENT NO. 19595

WHEREAS, IRON COUNTY, UTAH, 68 South 100 East, Parowan, Utah 84761, heretofore purchased from the State of Utah, the lands hereinafter described, pursuant to the laws of said State,

AND WHEREAS, the said IRON COUNTY, UTAH hase paid for said lands, pursuant to the conditions of said sale, and the laws of the State duly enacted in relation thereto, the sum of Ninety Thousand Dollars and No/100 (\$90,000.00), and all legal interest thereon accrued, as fully appears by the certificate of sale;

NOW THEREFORE I, MICHAEL O. LEAVITT, Governor, by virtue of the power and authority vested in me by the laws of the State of Utah, do issue this PATENT, in the name and by the authority of the State of Utah, hereby granting and confirming unto the said IRON COUNTY, UTAH and to its successors and assigns forever, the following tract or parcel of land, situated in the County of Iron, State of Utah, to-wit:

Township 32 South, Range 10 West, SLB&M Section 2: Lots 1 & 2, S½NE¼, N½SE¼, N½S½SE¼

Containing 303.47 acres, more or less

TO HAVE AND TO HOLD the above described and granted premises unto the said IRON COUNTY, UTAH and to its successors and assigns forever,

Excepting and reserving to the State of Utah all coal and other mineral deposits, along with the right for the State or other authorized persons to prospect for, mine, and remove the deposits; also,

Subject to any valid, existing rights of way of any kind and any right, interest, reservation or exception appearing of record; also,

Subject to all rights of way for ditches, tunnels, and telephone and transmission lines that have or may be constructed by the United States as provided by statute.

00459526 BK00843 PG00558-00559

PATSY CUTLER - IRON COUNTY RECORDER 2003 JAN 22 11:08 AM FEE \$.00 BY PTC REQUEST: IRON COUNTY CLERK Patent No. 19595 Page 2

By the Governor:

Michael O. Leavitt

Attested:

Olene S. Walker Lieutenant Governor

Stephen G. Boyden, Director School and Institutional Trust Lands Administration

APPROVED AS TO FORM Mark L. Shurtleff Attorney General

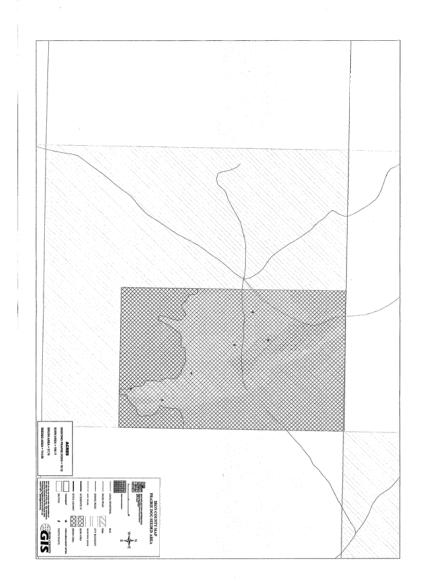
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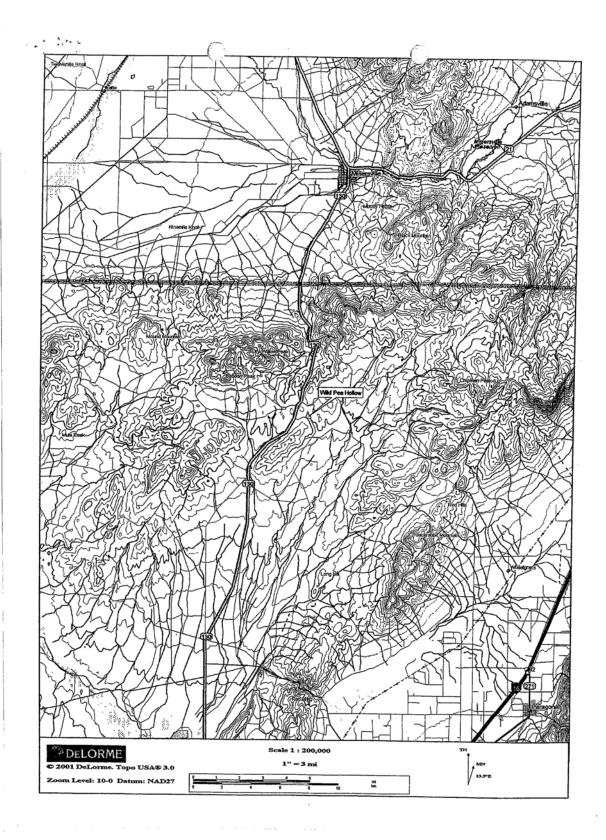
Patent Book 41 Page 95 Certificate of Sale No. 25622 Fund: School

00459526 BK00843 PG00559

Exhibit B



Form 4130-4 (June 1993)			FO	RM A	PPR	OVE	<u> </u>			_
(30116 1993)			OMB	NO.	100	4-00	20	_		
UNITED S			Expires	· Ma	irch	31,	199	6		_
DEPARTMENT OF T BUREAU OF LAND	MANAGEMENT		State	UT						_
EXCHANGE-OF-USE GRA	AZING AGREEMENT	г	Office	0	4	4			·	_
			Operator Number	4	3	0	4	3	4	7
Name (last, first, middle initial)			Address include st	1	city	Sta	te a			_
Stubbs, Scott A.			code)		,,				-	
			26 East 400 North Parowan, UT 8476	1						
I own/lease the following described land and expiration dates of the lease)	s (list by legal subdiv	vision and for thos	e lands which are lea	sed,	indi	cate	the	effe	ctive	
T. 32 S., R. 10 W. sec. 2, Lots 1 & 2, S	½NE¼, N½SE¼, N⅓	2S½SE¼. Contain		200	1	TO be seen at the second secon	The Average and in Martin Control of the Average and A			
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livestock grazing capacity of the privat time, and areas of use authorized. 3. I hereby apply for the following graz 5 years from July 1, 2003 to July 1, ALLOTMENT	ing use on intermin ine 30, 2008	ngled and adjacer unless sooner ter	at public lands to be minated by either pa	, kin	d, p	eriod	or	perio		of
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Inventory of Baseline Data Wild Pea Hollow

Legal Description:

Township 32 South, Range 10 West, SLB&M

Section 2: Lots 1 & 2, S ½ NE¼, N1/2 SE1/4, N ½

S1/2, SE1/4

Total Acreage:

303.47 acres more or less

Wild Pea Hollow General Description

The parcel contains 19 acres of occupied Utah prairie dog habitat and 217 acres of potential habitat. The remainder serves as buffers and foraging habitat. The average elevation of the Wild Pea Hollow land is 6,400 feet above sea level. The land consists of rolling foothills that historically were covered with basin big sagebrush (Artemisia tridentata ssp. tridentata) with a scattering of Utah juniper (Juniperus osteosperma)). In recent years, due to several range fires (both wild and controlled burns), much of the area has burned off allowing native grasses and shrubs to become the dominant species, but has also allowed for the invasion of Cheat grass Bromus tectorum and Rabbit Brush Chrysothamnus spp. The area is currently is grazed sheep.

Topography

Much of the landform is a dissected fan remnant, with a 2-15 percent slope. The elevation ranges from 6,000 to 7,000 feet. Mean annual temperature is 45 to 48 degrees with a mean annual precipitation 10 to 12 inches. Normally there are 120 to 140 days annually which are frost free.

Soils

Pauvant and similar soils dominate (85 %) the area. The Pauvant soil type is generally shallow (10-20 inches) and well drained. The top 14 inches are cobbly loam and gravely loam under laid with indurated carbonate hardpan. Ashdown, Muleypoint and Tombar soils make up the other 15% of the soil type.

Vegetation

Black sagebrush (Artemisia nova), Indian rice grass (Stipa hymenoides), Bluebunch wheatgrass (Agropyron spicatum), Wyoming big sagebrush (A. tridentata ssp. wyomingsis) and Antelope bitterbrush (Purshia tridentata) are the major vegetation species for the area. Cheat grass (Bromus tectorum) and Rabbit brush (Chrysothamnus) are present on the site but not considered a dominant specie. Other miscellaneous forbs,

perennial grasses and other shrubs are listed as occurring in the area. A scattering of Utah juniper (*Juniperus osteosperma*) is also present in the area. Two vegetation study plots were established on the Wild Pea site in 1999. See attached sheet for detail.

A habitat treatment of 198 acres of previously burned (wildfire) habitat will curtail grazing for the period of two years allowing seeding to establish, After the two years have lapsed, limited grazing will be allowed under an Exchange of Use Agreement with the BLM.

Wildlife

Most wildlife species associated with the Great Basin ecotype should be expected to be present in the Wild Pea Hollow area.

Some species which may occur in the area are:

Pronghorn antelope (Antilocapra americana)

Black-tail jack rabbit (Lepus californicus)

Desert cottontail rabbit (Sylvilagus audubonii)

Mourning dove (Zenaida macoura)

Sage thrasher (Oreoscoptes montanus)

Sage sparrow (Amphispiza belli)

Horned lark (Eremophila alpestris)

Golden eagle (Aquila chrysaetos)

Red-tail hawk (Buteo jamaicensis)

American kestrel (Falco sparverius)

Coyote (Canis latrans)

Badger (Taxidea taxus)

White-footed mice (Peromyscus sp.)

Kangaroo rats (Dipodomys sp.)

Utah milk snake (lampropeltis triangulum taylori)

Great basin rattlesnake (Crotahus viridis lutosis)

Sagebrush lizard (sceloperus graciosus)

Fence lizard (Sceloperus graciousus

Endangered and threatened Species

Utah prairie dog (Cynomys parvidens)

Pygmy rabbit (brachlagus idahoensis

Greater sage grouse (centrocercus urophansianus

Utah Prairie Dog Numbers

A field survey of the Wild Pea Hollow area was completed in the spring of 2003. The survey revealed that 19 acres of the 303 acres were occupied by prairie dogs. Population

counts performed by the BLM as per the survey protocol counted 45 individuals on the 19 acres. The survey also determined that 198 acres of unoccupied area was suitable for Utah prairie dogs to the degree that the plant community and soil types were consistent with known UPD habitats. Approximately 86 acres of Wild Pea Hollow will never be suitable for prairie dogs due to extreme rocky condition and / or steep hill sides.

Annual Counts

Wild Pea Hollow	Iron County	1998	1999	2000	2001	2002	2003	2004	2005
		9	18	20	26	39	45	50	57

Prairie Dog Vegetation Studies

Study Plot: LHS-5

study Flot. LHS-5			
= Date: 8/19/1999	Examiners: Ch	nristiansen / Victory	
Cover Category	Transects measured = 4	Total hits on four measured transects	%
==			
Bare Ground Litter Pavement Rock		22 80 17 16	11 40 8.5 8
Cool Season Grasses			
Three-awn (Aristida Indian Rice Grass (Of Blue Bunch Wheat G	rass (Agropyron intermedium) spp.)	31 15 1 2 3 no hits 3 no hits	15.5 7.5 .5 1 1.5
Forbs			
Globemallow (Spaera Carpet vervain (Verva		3 2	1.5 1
Shrubs			
Big Sagebrush (Arter Antelope bitterbrush Rubber rabbitbrush (1 2 1 no hits 1	.5 1 .5

Prairie Dog Vegetation Studies

Study Plot: LHS-6

Study Plot: LHS-6			
== Date: 8/19/1999	nristiansen / Victory		
00101	Γransects neasured = 4	Total hits on four measured transects	%
Bare Ground Litter		21 122	10.5 61
Pavement Rock		5	2.5
Cool Season Grasses			
Cheat Grass (Bromus to IntermediateWheat Gra Three-awn (Aristida s Indian Rice Grass (Ory	ass (Agropyron intermedium) pp.)	36 0 5 no hits	18 2.5
	ass (Agropyron spicatum) (Agropyron cristatum)	no hits 4 3	2 1.5 1.5
Globemallow (Spaeral Hoary rockcress (Aribi Hoary aster (Machaera Coyote tobacco (Nicot	is pubera) anthera canescens)	no hits no hits not hits	.5
Shrubs			
		1 6 4 1	.5 3 2 .5